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Mohamad Roslan bin Marjo v Public Prosecutor

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HIGH COURT (KUCHING) — CRIMINAL APPLICATION NOS KCH-44–9/11 OF 2018 AND KCH-46SOM-12/11 OF 2018
AZHAHARI KAMAL J
21 DECEMBER 2018

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Criminal Procedure — Reference to Federal Court — Application by accused — Accused charged under s 26E of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 — Accused applied to High Court to refer to Federal Court important questions of constitutional law — Whether offence was security offence for purpose of Security Offences (Special Measures) Act 2012 — Whether offence could be categorised as act which was prejudicial to public order or security of federation — Whether offence came within scope of art 149(1)(e) of the Federal Constitution — Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 s 26E

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There were 12 charges preferred against the accused, all under s 26E of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 ('the ATIPSOM'). The 12 charges were similar in that the accused was charged for making fraudulent travel documents ie Malaysian passport to 12 persons for the purpose of facilitating an act of smuggling of migrant. The accused was first charged before the sessions court and thereafter the charges was transmitted to the High Court. This was due to the fact that the prosecution has invoked the provision of Security Offences (Special Measures) Act 2012 ('the SOSMA') to have those cases tried in the High Court. By a notice of originating motion dated 12 November 2018, the accused moved this court to refer to the Federal Court important questions of constitutional law that ought to be determined. The question posed was, inter alia, whether the 12 charges preferred against the accused came within the ambit of Preambles (1), (2), (3) and (4) of the SOSMA or whether they came within the scope of art 149(1)(e) of the Federal Constitution.

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Held:

(1) The High Court was empowered to hear and decide any constitutional issues raised before it, other than those fell under art 128(1)(a) and (1)(b) of the Federal Constitution. Hence, the present application was within the power or jurisdiction of this court (see para 6).

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(2) Notwithstanding the fact that offences under Part IIIA of the ATIPSOM under which s 26E was enacted, had been listed as security offence under the First Schedule of the SOSMA, it did not provide a blanket provision

approval/categorically that all offences thereunder must be treated/considered/defined as security offence under the said Act. It was open to the defence to challenge whether any particular offence under the particular section under the First Schedule qualified to be considered as security offence for the purpose of a trial under SOSMA (see para 16).

(3) The offence purportedly committed by the accused under s 26E of the ATIPSOM was an act which was prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the federation or any part thereof ie which fell under art 149(1)(e) of the Federal Constitution. This paragraph had been expressly excluded in the recital of SOSMA which necessarily meant that this offence was not intended to be categorised as security offence. Hence, the 12 charges preferred against the accused came within the scope of art 149(1)(e) of the Federal Constitution and should not be treated as security offence (see para 22).

(4) Consequently, the charges against the accused should be tried in the sessions court and that the accused had the right to be released on bail. All charges in the High Court be struck out and the accused be discharged and not amounting to acquittal on those charges (see para 23).

[Bahasa Malaysia summary

Terdapat 12 pertuduhan pilihan terhadap tertuduh, semuanya di bawah s 26E Akta Antipemerdagangan Orang dan Antipenyeludupan Migran 2007 ('ATIPSOM'). Sebanyak 12 pertuduhan adalah sama kerana tertuduh didakwa melakukan dokumen perjalanan palsu iaitu pasport Malaysia kepada 12 orang bagi tujuan memudahkan tindakan penyeludupan migran. Tertuduh pertama kali dipertuduh dihadapan mahkamah sesyen dan selepas itu pertuduhan tersebut dipindahkan ke Mahkamah Tinggi. Ini disebabkan bahawa pihak pendakwaan telah membangkitkan peruntukan Akta Kesalahan Keselamatan (Langkah-Langkah Khas) 2012 ('SOSMA') untuk membawa kes-kes tersebut dibicarakan di Mahkamah Tinggi. Dengan notis usul pemula bertarikh 12 November 2018, tertuduh menggesa mahkamah ini untuk merujuk kepada Mahkamah Persekutuan mengenai persoalan penting mengenai undang-undang perlembagaan yang sepatutnya ditentukan. Persoalan yang ditimbulkan adalah, antara lain, sama ada 12 pertuduhan yang dikenakan terhadap tertuduh datang dalam jaringan mukadimah (1), (2), (3) dan (4) SOSMA atau sama ada ia berada dalam skop perkara 149(1)(e) Perlembagaan Persekutuan.

Diputuskan:

(1) Mahkamah Tinggi diberi kuasa untuk mendengar dan memutuskan apa-apa isu perlembagaan yang dibangkitkan dihadapannya, selain daripada yang tertulis di bawah perkara 128(1)(a) dan (1)(b)

Perlembagaan Persekutuan. Oleh itu, permohonan ini adalah dalam kuasa atau bidang kuasa mahkamah ini (lihat perenggan 6).

(2) Walau pun hakikat bahawa kesalahan di bawah Bahagian IIIA ATIPSOM di bawah yang mana telah digubal, telah disenaraikan sebagai kesalahan keselamatan di bawah Jadual Pertama SOSMA, ia tidak memberikan peruntukan kelulusan/mutlak menyeluruh bahawa semua kesalahan di bawahnya mestilah dirawat/dianggap/ditakrifkan sebagai kesalahan keselamatan di bawah Akta tersebut. Ia terbuka kepada pembelaan untuk mencabar sama ada sebarang kesalahan tertentu di bawah seksyen tertentu di bawah Jadual Pertama layak untuk dianggap sebagai kesalahan keselamatan bagi tujuan perbicaraan di bawah SOSMA (lihat perenggan 16).

(3) Kesalahan yang dikatakan dilakukan oleh tertuduh di bawah s 26E ATIPSOM adalah tindakan yang memudaratkan terhadap pengendalian atau fungsi apa-apa pembekalan atau perkhidmatan kepada orang awam atau mana-mana golongan orang awam dalam persekutuan atau mana-mana bahagiannya iaitu yang jatuh di bawah perkara 149(1)(e) Perlembagaan Persekutuan. Perenggan ini telah dikecualikan secara nyata dalam bacaan SOSMA yang bermaksud bahawa kesalahan ini tidak dimaksudkan untuk dikategorikan sebagai kesalahan keselamatan. Oleh itu, 12 pertuduhan terhadap tertuduh datang dalam skop perkara 149(1)(e) Perlembagaan Persekutuan dan tidak boleh dianggap sebagai kesalahan keselamatan (lihat perenggan 22).

(4) Oleh itu, pertuduhan terhadap tertuduh patut dibicarakan di mahkamah sesyen dan tertuduh mempunyai hak untuk dibebaskan dengan jaminan. Semua pertuduhan di Mahkamah Tinggi dibatalkan dan tertuduh dilepaskan dan tidak terjumlah kepada pembebasan atas tuduhan tersebut (lihat perenggan 23).]

Notes

For a case on application by accused, see 7(2) *Mallal's Digest* (5th Ed, 2017 Reissue) para 3772.

Cases referred to

PP v Khairuddin bin Abu Hassan & Anor [2017] MLJU 188; [2017] 4 CLJ 701, CA (folld)

Re application of Tan Boon Liat @ Allen; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors [1976] 2 MLJ 83 (folld)

Legislation referred to

Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 ss 2, 13, 26E, Part IIIA

Courts of Judicature Act 1964 ss 30, 30(1), (2), (3), 84, 85

Federal Constitution arts 4, 5, 8, 9, 10, 13, 121, 128(1)(a), (1)(b), 149(1), 149(1)(a), (1)(b), (1)(c), (1)(d), (1)(e), (1)(f)
Penal Code s 124L, Chapters VI, VIA, VIB
Security Offences (Special Measures) Act 2012 ss 3, 12, 13, 30, Part IIIA, First Schedule
Special Measures against Terrorism in Foreign Country Act 2015

Shankar Ram Pohumall Asnani (Daniel Ling with him) for the applicant.
Nurul Asyikin Rosli (standing in for Deputy Public Prosecutor Fazri Sani bin Mohamed Fadzril) (Deputy Public Prosecutor, Immigration Department of Malaysia) for the respondent.

Azhahari Kamal J:

[1] There are 12 charges preferred against the accused, all under s 26E of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 ('the ATIPSOM').

[2] The 12 charges are similar in that the accused was charged for making fraudulent travel documents ie Malaysian passport to the following persons:

(a) Liong Chee Xing (PP A41052525);
(b) Hayati bt Abd Mutalib (PP A41200181);
(c) Teoh Han Koong (PP A41200774);
(d) Loh Tai Fei (PP A41200783);
(e) Ang Chin Liang (PP A41200796);
(f) Lew Mei Yan (PP A41209990);
(g) Yow Hui Soo (PP A41415012);
(h) Choong Jin Yong (PP A41421822);
(i) Loo Lee Chong (PP A41424882);
(j) Lim Weng Heng (PP A40530024);
(k) Jenny Loh Siew Teng (PP A40530023); and
(l) Yeo Chee Chuan (PP A40531445),

for the purpose of facilitating an act of smuggling of migrant.

[3] By a notice of originating motion dated 12 November 2018, the accused move this court to refer to the Federal Court important questions of Constitutional Law that ought to be determined and which can and ought to

be dealt with in accordance with ss 84 and 85 read with s 30(1), (2) and (3) of the Courts of Judicature Act 1964. Among others the Constitutional questions posed are as follows: A

(a) whether the 12 charges preferred against the accused Mohamad Roslan bin Marjo come within the ambit of Preambles (1), (2), (3) and (4) of the Security Offences (Special Measures) Act 2012 ('the SOSMA 2012') or whether they come within the scope of art 149(1)(e) of the Federal Constitution; B

(b) whether ss 13 and 30 of the SOSMA 2012 that seek to remove from the courts an exercise of judicial power and discretion to grant bail to the accused and vest the same in the hands of the Public Prosecutor is contrary to the provisions of art 121 read with arts 4, 5, 8 and 9 of the Federal Constitution is void and/or unconstitutional; and C

(c) whether the 12 charges preferred against the accused is bad in law and does not come within s 26E of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. D

[4] At the outset, it must be noted that under s 30 of the Courts of Judicature Act 1964, the High Court at the request of the subordinate court is empowered to determine any question arises as to the effect of any provision of the constitution, and to act in accordance with s 84 as if it were a case before him in the jurisdiction of the High Court which the question arises. E

[5] However, ss 30 and 84 must be read together with art 128(1)(a) and (1)(b) which spells out the original jurisdiction of the Federal Court in determining any question regarding any provision of the constitution. F

[6] In my opinion, the High Court is empowered to hear and decide any constitutional issues raised before it, other than those fall under art 128(1)(a) and (1)(b). Further, learned counsel for the accused at the outset of the hearing of this application has indicated that they are challenging the constitutionality of ss 13 and 30 of the SOSMA and not the power of the Parliament to legislate SOSMA. Hence, the present application is within the power/jurisdiction of this court. G H

[7] As I have stated, the accused faces 12 charges under s 26E of the ATIPSOM. He was first charged before the sessions court and thereafter the charges was transmitted to the High Court. This is due to the fact that the prosecution has invoked the provision of SOSMA to have those cases tried in the High Court. I

[8] SOSMA was a piece of legislation which was promulgated under art 149

of the Federal Court. Article 149 empowers Parliament to enact any law against subversion, organised violence and acts and criminal prejudicial to the public and emergency order notwithstanding such law may be inconsistent with arts 5, 9, 10 and 13 that govern the fundamental liberties of the citizen. Article 149 reads:

> (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation —
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> (a) to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property; or
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> (b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or
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> (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or
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> (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or
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> (e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or
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> (f) which is prejudicial to public order in, or the security of, the Federation or any part thereof,
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> any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Articles 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.
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> (2) A law containing such a recital as is mentioned in Clause (1) shall, if not sooner repealed, ceased to have effect if resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this Article.

[9] It is obvious that art 149 is the enabling provision for the promulgation of any law for the purposes of combating subversion, organised crime and the like even if such law have the effect of curtailing any of the fundamental liberties of the citizen under arts 5, 9, 10 or 13. However, that law is subjected to the condition that the recital of such law must state any of the act as listed in cl 1(a)–(f).

[10] The SOSMA was enacted by Parliament on 31 July 2012. In its preamble, it was stated as such:

> An Act to provide for special measures relating to security offences for the purpose of maintaining public order and security and for connected matters.

WHEREAS action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia:

(1) to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property;

(2) to excite disaffection against the Yang di-Pertuan Agong;

(3) which is prejudicial to public order in, or the security of the Federation or any part thereof; or

(4) to procure the alteration, otherwise then by lawful means, of anything by law established.

AND WHEREAS Parliament consider if necessary to stop such action;

NOW, THEREFORE, pursuant to Article 149 of the Federal Constitution, IT IS ENACTED by Parliament of Malaysia as follows:

[11] Hence, the SOSMA was enacted pursuant to art 149 of the Federal Constitution. It is obvious that in the preamble, its drafters had found it necessary to recite (a), (b), (e) and (f) of art 149(1). Obviously missing are paras (c) and (d).

[12] Section 12 of the SOSMA provides that all security offences shall be tried by the High Court whereas s 3 defines 'Security offences' as offences specified in the First Schedule.

The First Schedule lists the security offences as offences under Chapters VI, VIA and VIB of the Penal Code and offences under Part IIIA of the ATIPSOM 2007 and Special Measures against Terrorism in Foreign Country Act 2015. Section 26E of ATIPSOM falls under Part IIIA of the Act.

[13] The offending section of the ATIPSOM, which become the subject matter of this application is s 13 whereby bail should not be granted to a person who has been charged with a security offence except in cases provided in sub-s (2) and s 30 with regard to detention pending exhaustion of legal process ss 13 and 30, on the face of it, is obviously inconsistent with art 5 of the Federal Constitution.

[14] Learned counsel for the accused, in his usual candour submitted that SOSMA is applicable to activities of terrorism, hence the offence under which the accused is charged of namely fraudulently making travel document for the purpose of facilitating an act of smuggling of migrant is obviously not an act of terrorism warranty it to be treated as security offence. Making a forceful submission, it was urged upon this court to rule that the offence should be tried as a normal criminal offence in the sessions court.

[15] Hence, the crux of the matter before this court is whether the offence under s 26E of the ATIPSOM is a security offence. In this respect, the case of *Public Prosecutor v Khairuddin bin Abu Hassan & Anor* [2017] MLJU 188; [2017] 4 CLJ 701 cited by the learned counsel for the accused is very much in point. In that case, the accused was charged for attempting to commit sabotage of the banking and financial services of this country, an offence under s 124L of the Penal Code. They filed a notice of motion seeking order, inter alia, that the charge under s 124L of the Penal Code falls outside the ambit of SOSMA. In the High Court it was decided that s 124L was not a security offence falling within the purview and ambit of SOSMA and that by the express exclusion of para (e) of art 149(1) of the Federal Constitution in the preamble of SOSMA, the Parliament, in enacting SOSMA never intended to designate such action described or stipulated therein as security offence. On appeal to the Court of Appeal, the appeal by the prosecution was dismissed. The judgment of the Court of Appeal is very relevant to the present case and I could do no better than reproducing the relevant parts of the judgment:

> [28] Further, we agree with the learned judge that in determining whether the offence under s 124L of the Penal Code is a security offence under SOSMA, the proper approach to be adopted is the purposive approach.
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> [32] The intention of Parliament as for the purpose and object of SOSMA can be seen from the following speech of the Minister in the Prime Minister Department during the second and third reading of SOSMA Bill 2012.
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> [33] From the statements by the Minister, it is crystal clear that the purpose and objective of SOSMA is to combat terrorism.
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> [35] At this juncture, it is pertinent to highlight the Minister's speech in tabling SOSMA bill that 'setiap Akta yang digubal di bawah Pekeliling 149 hendaklah diperincikan tindakan yang telah diambil itu'. Indeed, there are specific actions enumerated in art 149(1) of the Federal Constitution and SOSMA had adopted or recited only some of the actions. Taking the Minister's speech, every Act of Parliament or law enacted under art 149 must stipulate specifically the action that has been taken by the body of persons, which necessitate, the promulgation of such case.
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> [36] To reiterate, the preamble of SOSMA recites the action under paras (a), (b), (e) and (f) of clause (1) of art 149 and not the action under paras (c) and (e) of clause (1) of art 149 of the Federal Constitution. Whilst we found no ambiguity that SOSMA was enacted under art 149(1)(a), (b), (d) and (f) of the Federal Constitution, we found ambiguity whether the charge against the respondent under s 124L of the Penal Code was intended by Parliament to be categorised as security offence under art 149(1) of the Federal Constitution.
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> [37] The ambiguity arises from the fact that the offence created by s 124L of the Penal Code involves an action which falls under para (e) of clause (1) of art 149 and para (e) has been expressly excluded from the preamble of SOSMA.
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> [38] The incorporation or presence of s 124L in the First Schedule of SOSMA must

not be look in isolation. Notwithstanding s 124L being listed in the First Schedule of SOSMA, regard must be given to the overall scope, purpose and object of SOSMA. In our judgment, the inclusion of s 124L in the First Schedule does little to clarify the ambiguity as s 124L cannot change the scope, purpose and object of the enactment of SOSMA. SOSMA being a law which prescribes limitation on the liberty clause, must be construed religiously and any ambiguity must be resolved in favour of the respondent.'

[16] Hence, notwithstanding the fact that offences under Part IIIA of the ATIPSOM under which s 26E was enacted, has been listed as security offence under the First Schedule of the SOSMA, it does not provide a blanket provision approval/categorically that all offences thereunder must be treated/considered/defined as security offence under the said Act. It is open to the defence to challenge whether any particular offence under the particular section under the First Schedule qualified to be considered as security offence for the purpose of a trial under the SOSMA. At the same time, it is incumbent upon the court to determine whether that particular offence falls under the ambit of the SOSMA.

[17] Back to our present case, the next important issue to be determined is whether an offence under s 26E of the ATIPSOM is a security offence for the purpose of SOSMA. At the risk of being repetitive, it is to be emphasised that SOSMA is enacted to combat terrorism while there is no ambiguity that SOSMA was enacted under art 149(1)(a), (b), (d) and (f) of the Federal Constitution, there is ambiguity whether s 26E of the ATIPSOM was intended by the Parliament to be categorised as security offence under art 149(1) of the Federal Constitution. In this regard, I respectfully adopt the approach that had been approved by the Court of Appeal in *Khairuddin*'s case ie to determine whether the offence under s 26E of the ATIPSOM falls under any of the act found in the recital of SOSMA.

[18] Put it in another way, the relevant question to be asked is whether the act of making fraudulent Malaysian passport may be categorised as an act:

(a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or

(b) to excite disaffection against the Yang di-Pertuan Agong; or

(c) which is prejudicial to public order in, or the security of, the Federation or any part thereof; or

(d) to procure the alteration, otherwise then by lawful means, of anything by law established.

[19] Obviously the offence complaint of do not fall under paras (1), (2) and

(4) of the recital. The relevant question here is whether the offence can be categorised as an act which is prejudicial to the public order or the security of the Federation. While it may not be difficult to define the word 'security', the High Court's decision in the case of *Re application of Tan Boon Liat @ Allen; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1976] 2 MLJ 83 where Eusuffee Abdoolcader J (as he then was):

> 'Public order' means the tranquillity and security which every person feels under the protection of the law, a breach of which is an invasion of the protection which the law affords (Board of Commissioners of Peace Officers Annuity and *Benefit Fund v Clay* 102 SE 2d 575 @ 577). The American view on 'public order' was well expressed in *Cartewall v Connecticut* (1940) 310 US 296 @ 308 (at p 308) thus:
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> > The offence known as breach of the peace embraces a great variety of conduct, destroying or menacing public order and tranquillity. It includes not only violent acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot ... when clear and present danger of riot, disorder, interference with traffic upon public streets or other immediate threat to public safety, peace or order appears, the power of the State to prevent or punish is obvious.

The learned judge continues:

> The expression 'public order' is not defined anywhere but danger to human life and safety and the disturbance of public tranquillity must necessarily fall within the purview of the expression. It is used in a generic sense and is not necessarily antithetical to disorder, and is wide enough to include considerations of public safety within its signification. The Supreme Court of India exhaustively discussed the import of the term 'public order' in *Romesh Thappar v State of Madras* AIR 1950 SC 124 (in particular at p 127) when it established the principle that the maintenance of public order is equated with the maintenance of public tranquillity, that 'public safety' is a part of the wider concept of 'public order', that 'public safety' ordinarily means security of the public or their freedom from danger and in that sense will include the securing of public health, that is to say, anything which tends to prevent dangers to the public health may also be regarded as securing public safety.

[20] Before moving further, it must be noted that in the course of his submission, learned counsel for the accused submitted that the learned deputy public prosecutor has confirmed that the fraudulent passports, the subject matter of the charges against the accused, were issued to Malaysians. The learned deputy public prosecutor did not dispute this fact, hence the holder of these passports are Malaysian citizen.

[21] As such, can the act of the accused in making those passports be considered as prejudicial to public order? With due respect, I do not think so. How could the issuance of the passport to Malaysian citizen tantamount to be

a threat to public order. As submitted by learned counsel for the accused 'one cannot smuggle Malaysian migrant into Malaysia by issuing Malaysian passport because they are surely not 'migrant'. If I may add the definition of 'smuggling of migrant' under s 2 of the ATIPSOM involved an element of 'unlawful entry' into or through or unlawful exit from any country of which the person is not a citizen or permanent resident. Having being issued a travel document, albeit fraudulently, will not make a Malaysian citizen a smuggled migrant under the ATIPSOM.

[22] In my opinion, the offence purportedly committed by the accused under s 26E is an act which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the federation or any part thereof ie which falls under art 149(1)(e) of the Federal Constitution. As I have stated earlier in this decision, this paragraph has been expressly excluded in the recital of SOSMA which necessarily mean that this offence is not intended to be categorised as security offence. Hence, in answer to question (a) in this notice of motion, I rule that the 12 charges preferred against the accused came within the scope of art 149(1)(e) of the Federal Constitution and should not be treated as security offence.

[23] Consequently, I order that the charges against the accused should be tried in the sessions court and that the accused has the right to be released on bail. I order that the accused be produced before the sessions court at 10.30am. Bail application is to be dealt with by the sessions court. All charges in the High Court be struck out and the accused be discharged and not amounting to acquittal on those charges.

[24] Be that as it may, I would refrain myself from making any ruling on the constitutionality of ss 13 and 30 of the SOSMA. It must be noted that the definition of security cases under s 3 of the SOSMA and its First Schedule covers a variety of offences under Chapters VI, VIA and VIB of the Penal Code as well as under Part IIIA of the SOSMA and Special Measures Against Terrorism In Foreign Country Act 2015. As I have also stated earlier, art 149(1) empowers the Legislature to enact law for the purpose specified under art 149(1)(a)–(f) notwithstanding that it is inconsistent with arts 5, 9,10 and 13 of the Federal Constitution. As such, if any of the other offences listed under the First Schedule fall under any of the recital of SOSMA, then such offences shall be considered as security offences and s 13 thereof should apply to the accused. Since the present notice of motion makes specific reference to the offence under s 26E, I am of the opinion that it would be inappropriate for me to make a general ruling on the constitutionality of ss 13 and 30 without making any reference to the individual offence provided therein.

A *Order acccordingly.*

Reported by Nabilah Syahida Abdullah Salleh

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